IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B. CIVIL WRIT PETITION NO. 5903/2004
(Ram Kumar Vs. The Judge, Labour Court, Sri Ganganagar & Anr.)

(2) S.B.Civil Writ Petition No. 4869/2002
(Raj Kumar Vs. The Judge, Labour Court, Sri Ganganagar & Anr.)

Date of Order : 15/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. K.S.Yadav for the petitioners.
Mr. V.K.Agarwal for the respondent.

BY THE COURT:-

Both these writ petitions under Article 226 & 227 of the Constitution of India involve common questions of law and facts therefore, with the consent of learned counsel for the parties, they are heard and decided together.

By the instant writ petitions, the petitioners seek quashing of the award dated 22.5.2000 passed by the Judge, Labour Court, Sriganganagar (for short 'the Labour Court' hereinafter) whereby the Labour Court made “no dispute award”.

The facts and circumstances giving rise to the instant writ petitions are that a dispute was raised by the petitioners workmen. The Appropriate Government referred the disputes to the respondent No.1 Labour Court for adjudication. On receipt of

the reference from the Appropriate Government, the Labour Court registered the claims and issued notices to the parties. The petitioners workmen filed their respective claims as also the respondent No.2 employer filed written statement. The matter was posted for the evidence of the workmen. It appears that the matter was posted for evidence on 24.5.1999 and thereafter the matter was adjourned to 5.7.1999, 10.8.1999, 26.10.99 and 22.5.2000, on all these dates, no evidence was produced by the petitioners workmen and the Labour Court vide award impugned dated 22.5.2000 held that there is no dispute between the parties and passed the 'no dispute award' which has been challenged by the petitioners.

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioners that petitioner Ramkumar in Writ Petition No. 5903/04 fell ill in the month of February, 2000 and continuously remained under treatment during the year 2001. Before the Labour Court, the petitioner filed certain documents regarding medical examination, prescriptions and various tests undergone by him for his treatment. It is also contended that thereafter there being no one to look after the petitioner, he shifted himself to his parental house in the neighbour-hood of his brother and therefore, could not be contacted by the counsel representing the petitioner. Subsequently, the petitioner came to know that

the respondent No.1 Labour Court made a 'no dispute award'. This information was received by the petitioner from Rishiraj his representative and thereafter the petitioner filed an application before the Labour Court under Rule 22-A of the Rajasthan Industrial Disputes Rules, 1958 (for short 'the Rules of 1958' hereinafter) along with the treatment record supported by an affidavit. The Labour Court dismissed the application seeking setting aside of the 'no dispute award' vide the order dated 9.5.2002 Annex-5 and Annex.4. Hence these petitions.

Learned counsel for the petitioners has relied on a decision of Hon'ble Supreme Court in Virendra Bhandari Vs. Rajasthan State Road Transport Corporation and Others (2002) 9 SCC 104, a Division Bench decision of this Court in Pappu Ram Vs. The Labour Court, Jodhpur and Ors. 2005 (3) Western Law Cases (Raj.) 616 and a recent decision of this Court in Baldev Singh Vs. The Judge Central Govt. Industrial Tribunal & Labour Court and Ors. S.B.Civil Writ Petition No. 1964/2005 decided on 29.1.2007.

Learned counsel appearing for the respondent No.2 employer submits that the petitioners failed to show any sufficient cause by documentary evidence which in fact prevented the petitioners from appearing before the Labour Court and supported the order of the Labour Court to the extent dismissing the application under Rule 22-A of the Rules of 1958

on the ground that the said applications were highly laconic and without material proof. Learned counsel further submits that even if the award of the Labour Court to the extent passing no dispute award is not sustainable, then the Labour Court can be directed to adjudicate the matter on the basis of the material available on record and not by a fresh evidence.

I have given my thoughtful consideration to the rival submissions made by counsel for the parties.

In Baldev Singh Vs. The Judge Central Govt. Industrial Tribunal & Labour Court and Ors.(supra) while considering the case on similar facts wherein learned Labour Court made no dispute award, this Court set aside the no dispute award, remanded the matter to the Labour Court to adjudicate the reference made to it by the Appropriate Government by affording opportunity to both the parties to lead evidence and hearing. While examining the legality of the no dispute award, it was observed that it could have been open for the Labour Court to answer the reference on the basis of statement of claim and the reply whatever in either way, but it was not open for the Labour Court to pass a no dispute award.

In Virendra Bhandari Vs. Rajasthan State Road Transport Corporation & ors. (supra), a reference of certain industrial dispute was made to the Industrial Tribunal cum Labour Court. The workman did not appear before the Tribunal,

therefore, the Tribunal held that there remains no industrial dispute. However, subsequently, the Appropriate Government again referred the dispute to the Tribunal on the same question and on this occasion, the Tribunal adjudicated the matter and made an award. The High Court held that the finding recorded by the Tribunal in the first reference amounted to an "award" and, therefore, second reference was incompetent. The Hon'ble Apex Court held that all that was stated was that the parties concerned had not appeared before the Tribunal and in such an event, the Tribunal should have noted its inability to record the finding on the issue referred to it, not that the dispute itself does not exist. When there is no adjudication of the matter on merits, it cannot be said that the industrial dispute does not exist. If the industrial dispute still exists as is opined by the Government, such a matter can be referred under Section 10 of the I.D. Act as industrial disputes are referred to the Labour Court or the Industrial Tribunal for maintenance of industrial peace and not merely for adjudication of the dispute between two private parties. Therefore, it was permissible for the Government to have made the second reference. The Apex Court held that the duty of the Industrial Tribunal is to note its inability to record a finding on the referred issue and not that the dispute itself did not exist. In the instant case, the Labour Court, instead of showing its inability or recording its inability to record a finding

on the issue referred, made a "no dispute award", meaning thereby that the dispute itself did not exist, which runs contrary to the decision of the Hon'ble Supreme Court.

In The Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wader & ors., AIR 1975 SC 2238, the Hon'ble Apex Court held that a Tribunal cannot answer an award made by appropriate Government under Section 10 (1) (c) in the name of no industrial dispute award. The reference proceeding does not abate even on the death of workman what to talk of absence of workman. Thus, it is obligatory on a Labour Court or a Tribunal to answer a reference made under Section 10 (1) (c) on merit after proper adjudication. It is for the Tribunal to evolve its own procedure in conformity with the rules and exercise the power vested with it to make an award on the basis of material available on record. The Court or the Tribunal with a view to settle the industrial dispute keeping in mind the sense of doing complete justice to the parties concern, may obtain additional material, if so required.

In Pappu Ram Vs. The Labour Court, Jodhpur and Anr. (supra) a Division Bench of this Court held that when an appropriate Government makes a reference to the Industrial Tribunal or Labour Court under Section 10 (1) (c) it seeks opinion on an industrial dispute referred to it. The Tribunal is required to adjudicate on the dispute after taking necessary

evidence and hearing the parties. Such an opinion is expressed in the form of award which becomes final only after its publication by the appropriate Government under Section 17 of the Act. Once the award becomes final, it cannot be altered or modified by the parties. Sub-section (8) of Section 10 lays down that by reason of the death of a workman who was a party to an industrial dispute pending adjudication before a Labour Court, Tribunal or National Tribunal, the proceedings before such adjudicatory authority will not affect. Thus, it is evident that an industrial dispute cannot be closed even by reason of death of a workman. Thus, the provision implies that the effective hearing of dispute must continue despite the death of one of the parties and an order on merit of the rival contentions should be pronounced and that in award dismissing the reference or rejecting the claim simplicitor should be passed by reason of death. It must not be forgotten that the Industrial Disputes Act has been enacted with an object to provide provision for the investigation and settlement of industrial disputes which means adjudication of such disputes also. The powers of the authority deciding the industrial dispute under the Act are very extensive much wider than the power of civil Court while adjudicating a dispute which may be industrial dispute. It was further held that a Tribunal cannot answer an award made by appropriate Government under Section 10 (1) (c) in the name of no

industrial dispute award. The reference proceedings does not abate even on the death of workman what to talk of absence of workman. Thus, it is obligatory on a Labour Court or a Tribunal to answer a reference made under Section 10 (1) (c) on merit after proper adjudication. It is for the Tribunal to evolve its own procedure in conformity with the rules and exercise the power vested with it to make an award on the basis of material available on record.

Keeping in view the decision of Hon'ble Supreme Court in Virendra Bhandari Vs. Rajasthan State Road Transport Corporation & ors. and in The Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wader & ors. (supra) as also the decisions of this Court referred herein above, in my view the award impugned cannot be sustained and is liable to be set aside.

In the result, the writ petitions are allowed. The award impugned dated 22.05.2000 in both the cases are set aside and subsequent orders dated 09.5.2002 dismissing the applications under Rule 22A of the Rules of 1958 are also set aside and the matter is remanded to the Labour Court, Sriganganagar, to adjudicate the reference made to it by the Appropriate Government by affording opportunity to both the parties to lead evidence and hearing. No order as to costs.

rp **(H.R.PANWAR),J.**